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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JOSEPH NEEV, an individual,

13 Plaintiff,

14 v.

15 BAUSCH & LOMB INC., a New York
corporation; and TECHNOLAS
16 PERFECT VISION GMBH, a German
corporation,
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18 Defendants.
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No. 8:15-cv-1993

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

1 Plaintiff Joseph Neev (“Dr. Neev”), by and through his undersigned attorneys,
2 pleads as follows:

3 **I. PARTIES**

4 1. Dr. Neev is an individual residing in Laguna Beach, California.

5 2. On information and belief, Bausch & Lomb Inc. (“Bausch & Lomb”) is a
6 corporation organized and existing under the laws of the State of New York, having its
7 headquarters in Rochester, New York.

8 3. On information and belief, Technolas Perfect Vision GmbH
9 (“Technolas”) is a corporation organized and existing under the laws of Germany,
10 having its headquarters in Munich, Germany.

11 **II. JURISDICTION AND VENUE**

12 4. This Court has subject matter jurisdiction for this action pursuant to 28
13 U.S.C. §§ 1331 and 1338.

14 5. On information and belief, this Court has personal jurisdiction over
15 Bausch & Lomb for the reasons, among others, that (i) Bausch & Lomb transacts
16 business by selling infringing product in California, (ii) Bausch & Lomb has places of
17 business in Irvine and Rancho Cucamonga, California, and (iii) Bausch & Lomb
18 maintains an agent for service of process in Los Angeles, California.

19 6. On information and belief, this Court has personal jurisdiction over
20 Technolas for the reason, among others, that (i) Technolas acts through its agent,
21 Bausch & Lomb, to transact business in California, and (ii) Technolas manufactures
22 products with the intention of selling and marketing those products in California
23 through an affiliated company, namely Bausch & Lomb.

24 7. Venue is proper in this District because (i) Bausch & Lomb and
25 Technolas reside in this District within the meaning of 28 U.S.C. §§ 1391 and
26 1400(b), and (ii) Bausch & Lomb has committed acts of infringement in this District
27 and has a regular and established place of business in this District.
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III. FACTUAL ALLEGATIONS

A. Dr. Neev

8. Dr. Joseph Neev is a physicist and an inventor of revolutionary applications of lasers in the ophthalmic, dermatological, dental and cardiovascular fields.

9. Dr. Neev's career in advancing the use of laser technology to optimize surgical applications began in the late 1980s. His contributions to augment the use of lasers in medical and other applications is well-recognized in the industry, and can be seen through his numerous publications and his affiliation with reputable institutions such as Lawrence Livermore National Laboratory ("Livermore"), the University of California at Irvine ("UCI"), the Beckman Laser Institute, the University of California at San Diego, the University of California at San Francisco, Cornell University School of Medicine, the University of Texas at Austin, Stanford University's School of Medicine and Duke University's School of Medicine. As an internationally recognized leader in the field of femtosecond lasers in surgery and medicine, Dr. Neev was asked, in the mid-1990's, to organize the first conference on commercial and biomedical applications of ultrashort pulse lasers and served as the conference chair or co-chair for over a decade.

10. In the mid and late 1990s, Dr. Neev worked as an assistant professor of surgery at the Beckman Laser Institute and Medical Clinic, which was part of the Department of Surgery at UCI. At the time, Dr. Neev worked with other University of California scientists at Livermore on research and development projects relating to ultrashort pulse lasers. Livermore, which was managed by the University of California at the time, is a federally funded research laboratory, entrusted with strengthening the United States' security through the development and application of world-class science and technology.

B. The '199 Patent

11. Following his departure from UCI, Dr. Neev continued his research concerning medical applications of laser technology. Dr. Neev's subsequent work has resulted in the issuance of at least 15 U.S. Patents covering various laser, light and heat-based biomedical applications. Among these is U.S. Patent No. 6,482,199 (the "199 Patent"), entitled "Method and Apparatus for High Precision Variable Rate Material, Removal and Modification," which was issued to Dr. Neev by the U.S. Patent and Trademark Office on November 19, 2002.

12. Dr. Neev is the sole inventor and owner of the '199 Patent, and holds all right, title and interest in and to the '199 Patent.

C. The VICTUS Femtosecond Laser Platform

13. Bausch & Lomb imports the VICTUS Femtosecond Laser Platform into the United States and markets and sells the VICTUS Femtosecond Laser Platform in the United States, and does so as the agent of and on behalf of Technolas.

14. On information and belief, Technolas imports the VICTUS Femtosecond Laser Platform into the United States and markets and sells the VICTUS Femtosecond Laser Platform in the United States through its US agent, Bausch & Lomb.

15. The VICTUS Femtosecond Laser Platform is an ophthalmic surgical laser with at least the following indicated uses:

- The creation of a corneal flap in patients undergoing LASIK surgery or other treatment requiring initial lamellar resection of the cornea;
- Anterior capsulotomy during cataract surgery;
- The creation of cuts/incisions in the cornea in patients undergoing cataract surgery or other ophthalmic treatment requiring cuts / incisions in the cornea;
- The creation of penetrating arcuate cuts/incisions in the cornea in patients undergoing cataract surgery or other ophthalmic treatment requiring penetrating arcuate cuts/incisions in the cornea;

- Laser-assisted lens fragmentation of nuclear cataracts during cataract surgery, not for fragmentation of posterior subcapsular (PSC) and cortical cataracts.

16. On information and belief, the VICTUS Femtosecond Laser Platform is used to selectively ablate and/or modify eye tissue.

17. On information and belief, the VICTUS Femtosecond Laser Platform operates with a pulse duration in the approximate range from 290 femtoseconds to 550 femtoseconds.

18. On information and belief, the VICTUS Femtosecond Laser Platform operates with a pulse repetition rate of 80 kilohertz (cataract surgery), or 160 kilohertz (LASIK flap).

19. On information and belief, when the VICTUS Femtosecond Laser Platform is used for an indicated use, laser energy is directed at and below the surface of the eye, creating incisions or tunnels in the cornea as well as a plurality of cavitation bubbles below the surface of the eye.

20. On information and belief, when the VICTUS Femtosecond Laser Platform is used for an indicated use, an absorption and/or scattering characteristic of the material of the target region of the eye is varied, for example, as a result of the application of suction to the eye by a patient interface.

21. On information and belief, certain parameters of the VICTUS Femtosecond Laser Platform, such as the pulse duration and pulse energy, may be or have been manipulated such that a deposited volumetric power density of the beam within a target region of the eye is greater than the threshold volumetric power density.

22. On information and belief, when the VICTUS Femtosecond Laser Platform is used for an indicated use, ablation or other modification of eye tissue occurs as a result of the interaction of laser energy with eye tissue.

COUNT I
INFRINGEMENT OF THE '199 PATENT
(Against Bausch & Lomb and Technolas)

23. Dr. Neev restates and incorporates by reference his previous allegations above, as if fully set forth herein.

24. Bausch & Lomb and Technolas have infringed and continues to infringe one or more claims of the '199 Patent by making, using, selling or offering to sell in the United States and/or by importing into the United States the VICTUS Femtosecond Laser Platform.

25. Bausch & Lomb and Technolas have induced and continue to induce infringement of one or more claims of the '199 Patent in the United States by, among others, ophthalmic surgeons performing eye surgery using the VICTUS Femtosecond Laser Platform. Bausch & Lomb has known of the '199 Patent since at least 2008, when Dr. Neev corresponded and met with representatives of Bausch & Lomb in California and at Bausch & Lomb's laser division headquarters in Germany and informed them of the '199 Patent. Technolas has known of the '199 Patent since at least January 2013, when it was acquired by Bausch & Lomb or an affiliate of Bausch & Lomb. Bausch & Lomb and Technolas have known or acted with willful blindness to the likelihood that the use of the VICTUS Femtosecond Laser Platform by ophthalmic surgeons infringes the '199 Patent.

26. The VICTUS Femtosecond Laser Platform is configured such that the use of the lasers for eye surgery constitutes infringement, and Bausch & Lomb and Technolas instruct and encourage users to use the infringing laser for eye surgery.

27. With respect to the VICTUS Femtosecond Laser Platform, Bausch & Lomb's website and marketing materials state, among other things:

- "VICTUS, the industry-leading femtosecond laser that provides exceptional performance across cataract and corneal applications takes versatility to a new level. This single laser platform enables surgeons to

1 perform capsulotomies, fragmentation, arcuate incisions, corneal
2 incisions, and LASIK flaps. *VICTUS* is engineered to meet the standards
3 of the clinician who truly embraces innovation.”

- 4 • “The *VICTUS* platform is cleared for creation of a corneal flap in patients
5 undergoing LASIK surgery or other treatment requiring initial lamellar
6 resection of the cornea, and for anterior capsulotomy during cataract
7 surgery.”

8 28. Bausch & Lomb and Technolas intend that the infringing product be used
9 in a manner that infringes the ’199 Patent. Technolas obtained FDA approval for
10 infringing uses and Bausch & Lomb markets the product for infringing uses. On
11 information and belief, Bausch & Lomb and Technolas directly or indirectly create
12 and provide manuals, brochures and other documentation instructing and enabling
13 infringing uses.

14 29. Bausch & Lomb and Technolas have contributed to and continue to
15 contribute to infringement of one or more claims of the ’199 Patent in the United
16 States by, among others, ophthalmic surgeons performing eye surgery using the
17 *VICTUS* Femtosecond Laser Platform. The infringing product embodies a material
18 part of the claimed invention of the ’199 Patent, and Bausch & Lomb and Technolas
19 know that the product is especially made or adapted for uses that infringe the ’199
20 Patent. The infringing product is not a staple article or commodity of commerce
21 suitable for substantial non-infringing uses.

22 30. Bausch & Lomb and Technolas’s infringement of the ’199 Patent has
23 been and continues to be willful. Bausch & Lomb has known of the ’199 Patent since
24 at least 2008, and Technolas has known of the ’199 Patent since at least 2013. Bausch
25 & Lomb and Technolas knew or should have known that the *VICTUS* Femtosecond
26 Laser Platform infringes the ’199 Patent, and they have proceeded despite an
27 objectively high likelihood that a court would find the product to be infringing.
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1 E. Finding this case exceptional and awarding to Dr. Neev his reasonable
2 attorneys' fees incurred in prosecuting his claims for patent infringement;

3 F. Costs and interest;

4 G. Such other relief as the Court determines to be just and proper.

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6 DATED: November 30, 2015

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DEMAND FOR JURY TRIAL

Dr. Neev requests a jury trial for all issues triable to a jury.

DATED: November 30, 2015

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